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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,882	04/09/2004	Kenzo Sakurai	Q79368	9264
23373 7590 09/26/2007 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER PADEN, CAROLYN A	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 09/26/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/820,882	<b>Applicant(s)</b> SAKURAI, KENZO	
	<b>Examiner</b> Carolyn A. Paden	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smits for reasons of record and as further evidenced by Fessmann (1,137,637).

Applicant argues that Smits does not disclose a smoke dry component dissolved in a smoking liquid. This has been considered but is not persuasive because the claims do not require this feature.

Applicant urges that Smits does not disclose the use of a smoke-generating device into which no air is introduced. This has been considered but is not persuasive. Smits uses a Fessmann smoke generator, which uses steam extraction of smoke components. Air may be introduced into the steam to adjust the moisture and flavor of the composition (page 2, column 2, lines 67-72). There is no suggestion that air is required in the composition of Smits. It would have been obvious to omit the air in the smoke generation of Smits to prepare a smoking flavor without the flavor components introduced by air.

Applicant argues that Smits does not disclose removal of unnecessary substances. This is disagreed with as note column 3, lines 64-68 to column 4, lines 1-3. Change in pressure would be expected from the change in the temperature conditions used in Smits.

The rejection of the claims under 35 USC 112, 2<sup>nd</sup> paragraph and 35 USC 101 has been withdrawn in response to applicants' amendment to the claims.

Claims 3-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smits as further evidenced by Fessmann as applied to claims 1-2 above, and further in view of Kenzo for reasons of record.

Applicant argues that Kenzo refers to perfusion of animal meats and not to smoking of foods. But smoking foods is a known way to flavor and preserve foods. If one of ordinary skill in the art wanted to preserve fish with the smoking flavors of Smits, it would have been obvious to use the perfusion process of Kenzo to treat whole fish. Applicant argues that smoking liquid is not used in Kenzo. This has been considered but is not persuasive. Kenzo acts to improve the flavor of fish by introducing a perfusate containing anti-oxidants and taste improving ingredients. Smoking liquid is known for this purpose.

Applicant argues that Kenzo does not disclose the smoke generating process of the claims. This has been considered but is not persuasive because Kenzo is not relied upon to disclose the smoking process.

Applicant argues bubble size during perfusion but the claims are not limited to any particular bubble size so the argument is not persuasive.

Claims 8-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant argues that one of ordinary skill in the art would know what to use as an anti-coagulant. Applicant then goes on to mention an anti-coagulant that he is aware of. This response been considered but does not overcome the rejection. If applicant is aware of a reference to show that anti-coagulants are known in the art, such a reference would support applicants' assertion of knowledge in the art. Warfarin or rat poison is the only anti-coagulant that examiner is aware of and examiner does not believe that this is a suitable ingredient for foods for human consumption.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on (571) 272-1401 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Carolyn Paden*

**CAROLYN PADEN** 1761  
**PRIMARY EXAMINER** 9-24-07